

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

Paul Simon D/B/A Paul Simon Music,

Plaintiff,

v.

Rhythm USA, Inc. et al.,

Defendants.

Case No. 08-Civ-6440 (CM)

**DECLARATION OF YUICHI KOIZUMI IN SUPPORT OF  
DEFENDANTS' MOTION TO DISMISS  
AND/OR MOTION TO TRANSFER**

I, Yuichi Koizumi, declare as follows:

1. I am the president of Rhythm USA, Inc. ("Rhythm USA") and have held this position from April 2000 to June 2005, and since June 2008. I am a citizen of Japan and a resident of Atlanta.

2. The facts set forth herein are based on my personal knowledge, my review of documents prepared and maintained by Rhythm USA in the ordinary course of business, and upon information provided by Rhythm USA employees responsible for and with knowledge of the business of Rhythm USA. I could, if called to do so, testify to the facts set forth in this Declaration. I make this Declaration in support of defendants' Motion to Dismiss and/or Motion to Transfer.

**I. Rhythm USA Generally**

3. Rhythm USA is a corporation organized and operating under the laws of Georgia, with its principal place of business in Atlanta, Georgia.

4. Rhythm USA buys clocks from Rhythm Watch Co., Ltd. ("Rhythm Japan"), imports the clocks from Japan, and sells the clocks to retailers throughout the United States. The retailers, in turn, sell those clocks to end-users. Rhythm USA does not directly sell the clocks to end-users.

5. Rhythm USA has an office and a distribution center in Atlanta, Georgia, and another distribution center in Los Angeles, California. The Atlanta office coordinates the Rhythm USA's marketing and sales activities in the United States. Rhythm USA does not have any offices or facilities in the state of New York.

## **II. Relationship with Rhythm Japan**

6. Rhythm Japan makes no directions to Rhythm USA, nor does Rhythm USA need to obtain approval of Rhythm Japan, regarding promotion, marketing or distribution of the clocks in the United States. Rhythm USA determines its own distribution chain, and Rhythm Japan does not provide any guidance or input regarding this. Rhythm USA does not rely on Rhythm Japan to prepare, provide, or approve Rhythm USA's promotion, advertising or marketing materials.

7. Rhythm USA is responsible for handling its own ordinary business activities, and is not required to seek approval from Rhythm Japan before discharging these responsibilities.

8. Rhythm USA does not lease any offices, furniture or equipments from Rhythm Japan. Rhythm Japan does not list Rhythm USA on its letterhead, nor does Rhythm USA lists Rhythm Japan on its letterhead.

9. Rhythm USA currently has four directors. One of Rhythm Japan's directors concurrently serves as Rhythm USA's director, and another Rhythm Japan's director concurrently serves as Rhythm USA's auditor.

10. About half of Rhythm USA's current employees has been employed in the United States, without any direction from Rhythm Japan. Rhythm USA has complete control over all local employment decisions, and is not required to seek Rhythm Japan's approval.

11. Rhythm Japan does not pay Rhythm USA's executives or employees, nor does Rhythm Japan train Rhythm USA personnel. Rhythm USA pays and trains its personnel.

**III. Clocks Capable of Playing The Composition**

12. Plaintiff asserts that Rhythm USA infringed plaintiff's copyright on the musical composition "Bridge Over Troubled Water" (the "Composition") by selling clocks that are capable of playing the Composition.

13. I am informed that from July 2005 to present, Rhythm USA's total amount of sales of clocks that are capable of playing the Composition, to retailers whose delivery address is located in the state of New York, is approximately 3.2% of the total amount of sales of such clocks in the entire United States for that same period. This is also approximately 1.7% of the total amount of sales of all goods (not just clocks that are capable of playing the Composition, but also other goods) in the entire United States for that same period.

14. I am also informed that if I focus solely on the sales to retailers whose delivery address is located within the Southern District of New York, the figure becomes approximately 0.2% of the total amount of sales of such clocks in the entire United States for that same period. This is also approximately 0.1% of the total amount of sales of all clocks in the entire United States for that same period.

**IV. Information Possessed by Each Rhythm USA Personnel**

15. Rhythm USA currently has 8 personnel, and all of them resides in Atlanta.

16. I, as the president of Rhythm USA, have information concerning the day-to-day workings of Rhythm USA, as well as its business plan and sales strategy.

17. Mr. Koji Kajiyama is one of Rhythm USA's managers, who has information concerning Rhythm USA's sales and planning, including the number and location of Rhythm USA's customers, yearly revenues, and Rhythm USA's future sales plans.

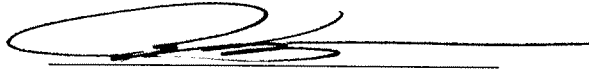
18. Mr. Daisuke Sato is another of Rhythm USA managers. He has information about Rhythm USA's importation of products, as well as its accounts payable and receivable, including ensuring the fulfillment of product orders.

19. Mr. Orlando Reyes is a customer service representative of Rhythm USA, and deals with customers from across the United States, when there is an issue relating to returns or product repairs.

20. Ms. Mary Druhan, Ms. Louise Petrocelli, and Ms. Esther Pae, who are also customer service representatives, are responsible for taking customer orders, interacting with Rhythm USA's potential customers, and developing relationships with Rhythm USA's customers.

21. Ms. Noriko Yarikochi, who is also a customer service representative, is responsible for assisting the accounting works, and has information regarding payment from Rhythm USA's customers and information on Rhythm USA's accounting system.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct, this 24<sup>th</sup> day of October 2008.

A handwritten signature in black ink, appearing to read 'Yuichi Koizumi', with a long horizontal line extending to the right.

Yuichi Koizumi